

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-54551; File No. 4-524)

September 29, 2006

Joint Industry Plan; Order Approving NMS Linkage Plan Filed by the American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., The NASDAQ Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC, NYSE Arca, Inc., and Philadelphia Stock Exchange, Inc.

I. Introduction

On July 17, 2006, pursuant to Rule 608 of the Securities Exchange Act of 1934 (“Act”),¹ the American Stock Exchange LLC (“Amex”), the Boston Stock Exchange, Inc. (“BSE”), the Chicago Board Options Exchange, Incorporated (“CBOE”), the Chicago Stock Exchange, Inc. (“CHX”), The NASDAQ Stock Market LLC (“Nasdaq”), the National Stock Exchange (“NSX”), the New York Stock Exchange LLC (“NYSE”), and NYSE Arca, Inc. (“NYSE Arca”) (“Linkage Participants”) filed with the Securities and Exchange Commission (“Commission”) an executed copy of the “Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934” (“Linkage Plan” or “Plan”), a national market system plan to create and operate an intermarket communications linkage pursuant to Section 11A(a)(3)(B) of the Act.² The Linkage Plan was initially executed by the eight self-regulatory organizations (“SROs”) listed above. The Philadelphia Stock Exchange, Inc. (“Phlx”) subsequently executed the Linkage Plan on August 1, 2006.³ The Commission published the Linkage Plan for comment in the Federal

¹ 17 CFR 242.608.

² 15 U.S.C. 78k-1(a)(3)(B).

³ A Linkage Plan, dated August 1, 2006, reflecting Phlx’s inclusion as a Linkage Participant, was received by the Commission on August 9, 2006.

Register on August 4, 2006.⁴ No comments were received on the Plan. This Order approves the Linkage Plan, thus authorizing the Plan Participants to act jointly in planning, developing, operating and regulating the NMS Linkage System (“Linkage” or “System”) that will electronically link the Participant Markets to one another, as described in the Linkage Plan, so as to further the objectives of Congress as set forth in Section 11A of the Act.⁵ A copy of the Plan, as approved, is attached as Exhibit A.

II. Background

Currently, the connectivity between markets is provided pursuant to the Intermarket Trading System (“ITS”) Plan, a National Market System plan, which was designed to facilitate intermarket trading in exchange-listed equity securities based on current quotation information emanating from the linked markets.⁶ Physical access is provided by ITS connectivity, and the terms of access are governed by the ITS Plan. Participants in the ITS Plan have agreed not to charge for access to their markets through the ITS. The ITS Plan provides grievance procedures for instances when a market’s quote is traded through and sets forth procedures to follow in the event of a locked or crossed market.

When the Commission adopted Regulation NMS over a year ago,⁷ it stated its belief that fair and efficient access to markets can be achieved without a collective intermarket linkage facility such as ITS, if baseline intermarket access rules are established. The Commission

⁴ See Securities Exchange Act Release No. 54239 (July 28, 2006), 71 FR 44328.

⁵ 15 U.S.C. 78k-1.

⁶ See Securities Exchange Act Release No. 14661 (Apr. 14, 1978), 43 FR 17419 (Apr. 24, 1978) (temporarily approving the ITS Plan). See also Securities Exchange Act Release No. 19456 (Jan. 27, 1983), 48 FR 4938 (Feb. 3, 1983) (permanently approving the ITS Plan).

⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

adopted Rule 610 (Access Rule) that requires non-discriminatory direct or indirect access and enables the use of private linkages offered by a variety of connectivity providers. The Commission also adopted Rule 611 (The Order Protection Rule) that establishes intermarket protection against trade-throughs for all NMS stocks. The required date for full operation of Regulation NMS-compliant trading systems of all automated trading centers that intend to qualify their quotations for trade-through protection under Rule 611 is February 5, 2007 (“Trading Phase Date”).⁸

Following the adoption of Regulation NMS and considering the limitations of the ITS Plan, and anticipating its termination, the ITS Participants (other than the NASD) agreed to the Linkage Plan, which, together with the ITS Plan, would govern the operation of the System until the termination of the ITS Plan, which is expected to take place on the Trading Phase Date.⁹ After the Trading Phase Date and until the SROs otherwise arrange to meet their access responsibilities, the operation of the System would be governed by the Linkage Plan.¹⁰ The Linkage Plan is intended to serve as an interim solution until all Participants are able to make other arrangements to meet their access responsibilities.¹¹

⁸ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006) (extending Rule 610 and Rule 611 compliance dates).

⁹ Because the Linkage Plan does not contain trade-through and locked/crossed market prohibitions, it is necessary to preserve the operation of the ITS Plan for the period before the Trading Phase Date. It is the Commission’s understanding that the ITS Plan Participants intend to file with the Commission a request for the termination of the ITS Plan. See letter from ITS Plan Participants to Nancy Morris, Secretary, Commission, dated September 18, 2006 (the “Letter”).

¹⁰ As provided in Sections 11 and 13 of the Linkage Plan, the Linkage Plan is to become operative on October 1, 2006 and will terminate on June 30, 2007. Linkage Plan Participants that wish to extend the term could agree to do so, subject to Commission approval.

¹¹ The National Association of Securities Dealers, Inc. (“NASD”) is not planning to join the Linkage Plan and until the Trading Phase Date will continue to maintain its connectivity

Until the Trading Phase Date, the Linkage Plan would run concurrently with the ITS Plan. Therefore, until the Trading Phase Date, when the ITS Plan is expected to terminate, all Linkage Plan Participants remain subject to the ITS Plan. To permit the Linkage Plan Participants to commence trading pursuant to the Linkage Plan, the ITS Plan Participants have requested that the Commission issue an exemption from certain provisions of the ITS Plan that would interfere with the operation of the Linkage Plan.¹²

III. Description of the Linkage Plan

A. Operation of the Linkage Plan.

The System includes the data processing hardware, software and communications network that electronically link the Participant Markets to one another. The System accommodates only regular-way trading. All System trades must be compared, cleared and settled through Commission-registered clearing corporations. The System is designed to accommodate trading in any Eligible Security, as defined in Section VII of the Consolidated Tape Association (“CTA”) Plan. Section VII of the CTA Plan provides generally that Eligible Securities include equity securities registered on the NYSE, the Amex or another national securities exchange whose original listing requirements substantially meet those of NYSE or Amex except for securities that are listed on the Nasdaq Stock Market. The particular securities that may be traded through the System at any time are selected by the Supervisory Committee. The Supervisory Committee may add or delete System securities as it deems appropriate and

under the ITS Plan.

¹² With the exception of SRO rules pertaining to locked and crossed markets, the ITS Plan Participants have requested relief from the requirement to enforce compliance with those SRO rules, which correspond to the requested ITS Plan exemptions. See the Letter. The Linkage Plan Participants will continue to be subject to Section 8(d)(i) of the ITS Plan (Trade-Throughs; Locked Markets) and corresponding SRO rules.

may delay the commencement of trading in any Eligible Security if capacity or other operational considerations require a delay.

The Securities Industry Automation Corporation (“SIAC”) serves as the System’s facilities manager and has responsibility for the operation and maintenance of the System. SIAC performs its function as facilities manager in accordance with Plan provisions and subject to the administrative oversight of the Supervisory Committee.¹³

The System accepts only immediate-or-cancel limit orders. Orders must be sent to a Participant Market through the auspices of a member of that Participant, known as a Sponsoring Member.¹⁴ The minimum information that must be specified in an order includes the Sponsoring Member; the “give-up” in the originating Participant Market; the security; the side (buy or sell); the amount to be bought or sold (which must be for one unit of trading (i.e., 100 shares) or any multiple thereof); and the price.¹⁵ The price must be equal to the bid or offer then being furnished by the destination Participant Market. An order must specify a “time in force” of 5, 15 or 120 seconds, after which the order will expire if unexecuted.

After Trading Phase Date, all routed limit orders will be presumed by the executing market to be intermarket sweep orders sent in accordance with Rule 611(b) of Regulation NMS.¹⁶ The trading rules applicable in destination Participant Markets will apply to orders received in the market and the execution of those orders in the market.¹⁷

¹³ Section 5(d) of the Linkage Plan.

¹⁴ In the event that the Participants are unable to implement Sponsoring Member billing on October 1, 2006, the Participants have agreed to accept direct exchange-to-exchange billing and have filed proposed rule changes to this effect. See, e.g., Securities Exchange Act Release No. 54480 (Sept. 21, 2006), 71 FR 57596 (Sept. 29, 2006).

¹⁵ Section 6(a)(ii) of the Linkage Plan.

¹⁶ Section 6(a)(v) of the Linkage Plan.

¹⁷ Section 6(b) of the Linkage Plan.

B. Terms and Conditions of Access

Section 3(c) of the Plan provides that any national securities exchange or national securities association may become a Plan Participant by agreeing, in an amendment to the Plan adopted in accordance with its provisions, to comply, and to enforce compliance, with the Plan as provided in Section 3(b) of the Plan. An applicant for Plan participation is required to pay SIAC an amount estimated by SIAC to cover development costs to be incurred to accommodate the new Participant. In addition, before the applicant becomes a Plan Participant, the applicant must pay SIAC actual development costs in excess of estimated development costs, or SIAC will reimburse the applicant estimated development costs that were paid and are in excess of actual development costs. A new Participant shares in development costs incurred after it becomes a Participant in accordance with Section 10(a)(iii)(A).¹⁸

C. Fees and Charges

The Linkage Plan imposes no fees or charges in connection with orders executed through the Linkage. A Sponsoring Member is subject to applicable transaction charges imposed by the executing market.¹⁹ Each Participant is free to determine whether or not to impose, and the amount of, a fee or charge on its members in connection with use of its facilities to access the System. Any such fee or charge must not be of such size, or so structured, as to discourage use of the System.²⁰

¹⁸ Section 10(a)(iii)(C) of the Linkage Plan.

¹⁹ The Sponsoring Member is responsible for paying applicable transaction fees of the destination market.

²⁰ Section 10(b) of the Linkage Plan. Any fees charged by Participants must be filed with the Commission pursuant to Section 19(b) of the Act.

D. Dispute Resolution

The Linkage Plan does not include specific provisions regarding resolution of disputes between or among Participants. Section 4(d) of the Plan provides that no action or inaction by the Supervisory Committee shall prejudice any Participant's right to present its views to the Commission or any other person with respect to any matter relating to the System or to seek to enforce its views in any other forum it deems appropriate. In addition, Section 6(b) provides that the trading rules of the destination market apply to orders received in that market, as well as to executions of orders in that market. Each Participant determines the extent to which its trading rules apply to members in its market with respect to the members' issuance of orders from the market and executions that occur in the market.

IV. Discussion

In Section 11A of the Act,²¹ Congress directed the Commission to facilitate the development of a national market system consistent with the objectives of the Act. In particular, Section 11A(a)(3)(B) of the Act²² authorizes the Commission "by rule or order, to authorize or require SROs to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities." Rule 608 under the Act establishes the procedures for filing, amending, and approving national market system plans.²³ Pursuant to paragraph (b)(2) of Rule 608, the Commission's approval of a national market system plan is conditioned upon a finding that the proposed plan "is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect

²¹ 15 U.S.C. 78k-1.

²² 15 U.S.C. 78k-1(a)(3)(B).

²³ 17 CFR 242.608.

the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act.”²⁴

After carefully considering the proposed Linkage Plan, the Commission has determined to approve, pursuant to Section 11A(a)(3)(B) of the Act,²⁵ and Rule 608 thereunder,²⁶ the Linkage Plan, thus authorizing the Plan Participants to act jointly to implement the Plan's intermarket linkage.²⁷

In 1975, Congress determined that the “linking of all markets” for NMS stocks through communications and data processing facilities would “foster efficiency; enhance competition; increase the information available to brokers, dealers, and investors; facilitate the offsetting of investors’ orders; and contribute to the best execution of investors’ orders.”²⁸ All SROs that trade exchange-listed stocks currently are linked through ITS, an intermarket linkage facility. ITS provides a means of access to exchanges and Nasdaq by permitting each market to send a “commitment to trade” through the system, with receiving markets generally having up to 30 seconds to respond. ITS also provides access to quotations of participants without fees and establishes uniform rules to govern quoting practices. Although ITS promotes access among participants that is uniform and free, it also is often slow and limited. Moreover, it is governed by a unanimous vote requirement that has at times impeded innovation in the system or its set of rules. In contrast, there is no collective intermarket linkage system for Nasdaq stocks. Instead,

²⁴ 17 CFR 242.608(b)(2).

²⁵ 15 U.S.C. 78k-1(a)(3)(B).

²⁶ 17 CFR 242.608.

²⁷ Although Phlx initially did not sign the Plan, it subsequently executed the Linkage Plan on August 1, 2006. A Linkage Plan, dated August 1, 2006, reflecting Phlx’s inclusion as a Linkage Participant, was received by the Commission on August 9, 2006.

²⁸ Section 11A(a)(1)(D) of the Act.

access is achieved primarily through private linkages among individual trading centers. This approach has demonstrated its benefits among electronic markets; it is flexible and can readily incorporate technological advances as they occur.

Rule 610 adopted by the Commission in Regulation NMS²⁹ reflects the Commission's determination that fair and efficient access to markets can be achieved without an intermarket linkage facility such as ITS, if baseline intermarket access rules are established.

The proposed Linkage Plan would govern the operation of the System together with the ITS Plan until the termination of the ITS Plan expected to take place on the Trading Phase Date.³⁰ After the Trading Phase Date and until the SROs otherwise arrange to meet their access responsibilities, the operation of the System would be governed by the Linkage Plan.³¹ The Linkage Plan is intended to serve as an interim solution until all Participants otherwise arrange to meet their access responsibilities.³²

To permit the Linkage Plan Participants to commence trading pursuant to the Linkage Plan, the ITS Plan Participants have requested that the Commission issue an exemption from

²⁹ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

³⁰ The Linkage Plan does not contain trade-through and locked/crossed market prohibitions, therefore it is necessary to preserve the operation of the ITS Plan for the period before the Trading Phase Date. It is the Commission's understanding that the ITS Plan Participants intend to file with the Commission a request for the termination of the ITS Plan. See the Letter.

³¹ As provided in Sections 11 and 13 of the Linkage Plan, the Linkage Plan is to become operative on October 1, 2006 and will terminate on June 30, 2007. Linkage Plan Participants that wished to extend the term could agree to do so, subject to Commission approval.

³² NASD is not planning to join the Linkage Plan and until the Trading Phase Date will maintain its connectivity under the ITS Plan.

certain provisions of the ITS Plan that would interfere with the operation of the Linkage Plan.³³

In a separate action, the Commission today has granted an exemption from certain provisions of the ITS Plan that could interfere with the operation of the Linkage Plan, but until the Trading Phase Date, the Linkage Plan Participants will continue to be subject to certain provisions of the ITS Plan and corresponding SRO rules governing Trade-Throughs and Locked Markets, as well as to some other provisions of the ITS Plan.³⁴

In approving the Linkage Plan, the Commission finds that the Linkage Plan is consistent with the Act in that it enhances intermarket competition by providing a means of intermarket access for Eligible securities, pending the full implementation of Regulation NMS and, therefore, would promote investor protection and the maintenance of fair and orderly markets.

³³ With the exception of SRO rules pertaining to locked and crossed markets, the ITS Plan Participants have requested relief from the requirement to enforce compliance with those SRO rules, which correspond to the requested ITS Plan exemptions. See the Letter.

³⁴ See letter from Erik R. Sirri, Director, Division of Market Regulation, Commission, dated September 29, to Robert Hill, Chairman, ITS Operating Committee.

V. Conclusion

IT IS HEREBY ORDERED, pursuant to Section 11A(a)(3)(B) of the Act,³⁵ and Rule 608 thereunder,³⁶ that the Linkage Plan submitted by the Linkage Plan Participants is approved and the Linkage Plan Participants (and any other self-regulatory organization which agrees to be a Plan Participant) are authorized to act jointly in planning, developing, operating or regulating the Linkage Plan as a means of facilitating a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³⁷

Nancy M. Morris

Secretary

³⁵ 15 U.S.C. 78k-1(a)(3)(B).

³⁶ 17 CFR 242.608.

³⁷ 17 CFR 200.30-3(a)(27).

PLAN FOR THE PURPOSE OF CREATING AND OPERATING
AN INTERMARKET COMMUNICATIONS LINKAGE PURSUANT
TO SECTION 11A(a)(3)(B) OF THE SECURITIES
EXCHANGE ACT OF 1934

AGREEMENT made as of June 12, 2006, among American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc, Chicago Stock Exchange, Inc, Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC, and NYSE Arca, Inc.¹

WHEREAS, the undersigned national securities exchanges are parties to the plan submitted to the Securities and Exchange Commission (the “SEC”) for the purpose of creating and operating an intermarket communications linkage pursuant to section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the “Act”).

¹ The Philadelphia Stock Exchange, Inc. (“Phlx”) subsequently executed the Linkage Plan on August 1, 2006. A Linkage Plan, dated August 1, 2006, reflecting Phlx’s inclusion as a Linkage Plan participant, was sent to the Commission on August 8, 2006.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, the parties agree to submit this Agreement called the NMS Linkage Plan to the SEC for approval pursuant to section 11A(a)(3)(B) of the Act and Rule 608 thereunder.

1. Definitions

(1) “Application” means any use of the System to facilitate trades between Participant Markets that is described in the NMS Linkage Plan.

(2) “CTA Plan” means the plan filed with the SEC pursuant to SEC Rule 17a-15 (subsequently amended and redesignated as Rule 11Aa3-1, and subsequently amended and redesignated as Rule 601), approved by the SEC and declared effective as of May 17, 1974, as from time to time amended.

(3) “CTA Plan Processor” means the organization serving as recipient and processor of last sale prices under the CTA Plan.

(4) “Eligible Security” has the meaning assigned to that term in the CTA Plan.

(5) “NMS Linkage Plan” or “Linkage Plan” means this plan as from time to time amended in accordance with the provisions hereof.

(6) “NMS Linkage System” (“Linkage” or “Linkage System”) means the system described in section 5.

(7) “Network A Eligible Security” has the meaning assigned to that term in the CTA Plan.

(8) “Network B Eligible Security” has the meaning assigned to that term in the CTA Plan.

(9) “Participant” means a party to the Linkage Plan with respect to which such plan has become effective pursuant to section 13.

(10) “Participant(’s) Market” means a facility for the trading of System securities operated by a Participant.

(11) “System” means the data processing hardware, software and communications network that links electronically the Participant Markets to one another. The System includes (a) computers that perform such functions as message validation, processing, logging and switching and (b) from a functional standpoint, (i) high speed communications lines that link such computers with the Participant Markets (either directly or through Participant Switches), and (ii) Linkage System stations.

(12) “System security (stock)” means a security (stock) selected for trading through the Applications in accordance with section 5(b)(ii).

(13) “System trade” means any trade made through any Application.

2. Purpose of Linkage Plan. The purpose of the Linkage Plan is to enable the Participants to act jointly in planning, developing, operating and regulating the system as described in the Linkage Plan so as to further the objectives of Congress as set forth in section 11A(a) of the Act and to facilitate compliance by the Participants and their respective members with SEC Rules 610 and 611.

3. Parties.

(a) List of Parties. The parties to the Linkage Plan are as follows:
American Stock Exchange LLC (“AMEX”), registered as a national securities exchange under the Act and having its principal place of business at 86 Trinity Place, New York, New York 10006

Boston Stock Exchange, Inc. (“BSE”), registered as a national securities exchange under the Act and having its principal place of business at as 100 Franklin Street, Boston, Massachusetts 02110

Chicago Board Options Exchange, Inc. (“CBOE”), registered as a national securities exchange under the Act and having its principal place of business at 400 South LaSalle Street, Chicago, Illinois 60605

Chicago Stock Exchange, Inc. (“CHX”), registered as a national securities exchange under the Act and having its principal place of business at One Financial Place, 440 South LaSalle Street, Chicago, Illinois 60605

Nasdaq Stock Market LLC (“Nasdaq”), registered as a national securities exchange under the Act and having its principal place of business at 1 Liberty Plaza, 165 Broadway, New York, NY 10006

National Stock Exchange (“NSX”), registered as a national securities exchange under the Act and having its principal place of business at 440 South LaSalle Street, Suite 2600, Chicago, Illinois 60605

New York Stock Exchange LLC (“NYSE”), registered as a national securities exchange under the Act and having its principal place of business at 11 Wall Street, New York, New York 10005
NYSE Arca , Inc. (“Arca”), registered as a national securities exchange under the Act and having its principal place of business at 100 S. Wacker Drive, Chicago, IL 60606

Philadelphia Stock Exchange, Inc. (“Phlx”), registered as a national securities exchange under the Act and having its principal place of business at 1900 Market Street, Philadelphia, Pennsylvania 19103

(b) Compliance Undertaking. By subscribing to and submitting the Linkage Plan for filing with the SEC, each undersigned party agrees to comply to the best of its ability and, absent reasonable justification or excuse, to enforce compliance by its members in their use of the Linkage through its facilities with the provisions of the Linkage Plan.

(c) New Participants. The Participants agree that any other national securities exchange or national securities association may subscribe to the Linkage Plan and become a Participant by agreeing, in an amendment to the Linkage Plan adopted in accordance with its provisions, to comply and to enforce compliance with the provisions of the Linkage Plan as provided in section 3(b).

4. Administration of Linkage Plan.

(a) Supervisory Committee: Composition, Voting. Each Participant shall select from its staff one individual to represent such Participant as a member of the Supervisory Committee under the Linkage Plan. Except as may be specifically otherwise provided herein, action taken pursuant to the vote of a majority of the members of the Supervisory Committee present at a meeting of the committee at which a majority of the full committee is present shall be deemed to be the action of the Supervisory Committee.

(b) Supervisory Committee: Authority. The Supervisory Committee shall not be a policy-making or a rule-making body, but shall, either directly or by delegating its functions to individuals, subcommittees established by it from time to time or others, (i) oversee development of the System in accordance with the specifications therefore agreed upon by each Participant, (ii) monitor the operation of the System and (iii) advise the Participants with respect to any deficiencies, problems or recommendations as the Supervisory Committee may deem appropriate in its administration of the Linkage Plan. In this connection, the Supervisory Committee shall

have authority to develop procedures and make administrative decisions necessary to facilitate the operation of the System in accordance with the provisions of the Linkage Plan.

(c) Amendments to Linkage Plan. Any proposed change in, addition to, or deletion from the Linkage Plan may be effected only by means of a written amendment to the Linkage Plan which sets forth the change, addition or deletion, is executed on behalf of each Participant and is approved by the SEC or otherwise becomes effective pursuant to section 11A of the Act and Rule 608(b).

(d) Participant's Rights. No action or inaction by the Supervisory Committee shall prejudice any Participant's right to present its views to the SEC or any other person with respect to any matter relating to the System or to seek to enforce its views in any other forum it deems appropriate.

5. The System.

(a) System Monitoring.

(i) Linkage Supervisory Stations. Each Participant will maintain a Linkage supervisory station where supervisors appointed by such Participant will be able to coordinate trade adjustments.

(ii) Linkage Control Center. The System also includes the Linkage control center ("LCC"), which monitors and controls communications within the System, including the processing of error conditions. The LCC staff is able to display and, when authorized by any Participant, to modify the security and market records of that Participant's Market as such records relate to the System. The LCC staff is also able to indicate whether or not any Participant Market is open for System trades. In addition, the LCC may be used as "back-up" for the Linkage supervisory system-wide broadcasts. Finally, the LCC staff is able to enter adjustments of any

trade pursuant to the procedures specified in section 6(a)(iv) and to perform data base control after trading hours.

(b) General Operation.

(i) Registered Clearing Corporations. The System accommodates only regular-way trading, and all System trades must be compared, cleared and settled through clearing corporations registered with the SEC that maintain facilities through which such transactions may be compared and settled and that agree to supply each Participant with data reasonably requested in order to permit such Participant to enforce compliance by its members with its rules, the provisions of the Act, the rules and regulations thereunder, and the Linkage Plan.

(ii) Selection of System Securities. The System is designed to accommodate trading in any Eligible Security. The particular securities that may be traded through the System at any time (“System securities”) shall be selected by the Supervisory Committee. The Supervisory Committee may add or delete System securities as it deems appropriate and may delay the commencement of trading in any Eligible Security if capacity or other operational considerations shall require such delay.

(c) Administrative Messages. Administrative messages, as distinguished from orders, responses thereto and trade adjustment inputs (including names later information), may also be sent through the System.

There are two categories of administrative messages that can be sent by Participant members: single destination and security broadcast. Another category of administrative message, a “system-wide broadcast”, may be sent through the System only from the Linkage control center.

(d) Facilities Manager. The Securities Industry Automation Corporation (“SIAC”)

serves as the System's facilities manager and has responsibility for the operation and maintenance of the System. SIAC performs its function as facilities manager in accordance with the provisions of the Linkage Plan and subject to the administrative oversight of the Supervisory Committee.

6. Linkage System

(a) Technical Matters.

(i) The System shall accept immediate or cancel ("IOC") orders, provided however, that, upon the request of a Participant or Participants, and in accordance with Section 10(a)(iii)(A) relating to New Development Costs Sharing, the System shall accommodate additional order types to be utilized by such Participant or Participants. Orders must be sent to a Participant market through the auspices of a member of that Participant, known as a Sponsoring Member. Each market will maintain within SIAC a database of default Sponsoring Members (not to exceed 10) for after hours processing and billing for orders sent to a market where the originating firm is not a member of the destination market.

(ii) Order Information. An order shall, at a minimum, specify the following:

(A) The member of the destination market (either clearing member or Sponsoring Member);²

(B) Original clearing member or omnibus clearing account of the originating

² The member of the destination market will be identified by a unique clearing number. If the clearing number provided by the originating Participant Market does not identify a member of the destination market, SIAC will identify the default Sponsoring Member of the originating market at the destination market for the security in question and that Sponsoring Member's identification information will be included on the order to the destination market on all reports sent to the destination market, including any report for billing purposes. The member identified on the order will be responsible for any fees in the destination market. SIAC will provide to Participants a key to match the clearing number to the member's name.

Participant Market, commonly referred to as the Give-Up,

- (C) the receiving Participant Market,
- (D) the security that is the subject of the order,
- (E) designation of the order as an order to buy or to sell,
- (F) the amount of the security to be bought or sold, which amount shall be for one unit of trading or any multiple thereof,
- (G) a price equal to the offer or bid price then being furnished by the destination

Participant Market, which price shall represent the price at or below which the security is to be bought or the price at or above which the security is to be sold, respectively,

(H) to facilitate application of the short sale rule in effect in the destination Participant Market, a designation of the order as “short” or “short exempt” whenever it is a order to sell short, and

- (I) time in force as 5, 15 or 120 seconds.³

(iii) Order Validation, Routing. At the time of transmission, each order undergoes validation procedures. If the order passes the validation procedures, the System assigns a unique order identifier number (a “OID”) to the order, time stamps it and logs it on a

³ A Participant Market may prevent the execution, through its facilities, of an otherwise marketable System order, prior to the 5, 15 or 120 second time in force parameter assigned to that order, if the time in force parameter would result in the issuance of an expiration notice to the sending market before execution of such order could be reported to SIAC. Any such procedure must be effective pursuant to a filing with the SEC. No order with a time in force parameter of 5 or 15 seconds shall be sent to AMEX, CBOE, CHX, or PHLX prior to the earlier of (i) the date on which all automated trading centers intending to qualify their quotations for trade-through protection under Rule 611 of Regulation NMS must have achieved full operation of Regulation NMS-compliant trading systems or (ii) the date on which AMEX, CBOE, CHX, or PHLX, as the case may be, has notified the Supervisory Committee in writing that it is capable of accepting and executing such orders. If an order with either of these time in force parameters is sent to AMEX, CBOE, CHX, or PHLX prior to such time, it will not be executed due to system limitations.

mass storage device (the “daily log”). The System also sends a transmission acceptance message to the Participant Market that originated the order. The order is then routed to the destination Participant Market. If the order is accepted, in whole or in part, in the destination Participant Market, the execution is reported back through the System to the originating and receiving Participant Markets.

The System rejects the transmission of a response that fails the validation check and sends an appropriate error message to the Participant Market that originated the response. The validation of a response causes the System to retrieve the related order from the daily log and update it with appropriate response information. This log forms the basis from which the after-hours reports described in section 7(a) are produced. Validation also causes the System to send a transmission acceptance message to the Participant Market that originated the response. The System then sends the response to the Participant Market that originated the order. When an order is only partially executed, the unexecuted shares are not filled, and the System generates a cancellation for the unexecuted quantity and appends the cancellation to the execution report that it sends to the Participant Market that originated the order.

(iv) Trade Adjustments. In accordance with section 5(a)(ii), supervisors monitoring the Participant Markets may request the LCC to enter adjustments to trades (i.e., to price, share size, buy or sell side, to cancel a trade or to insert a trade “as-of” a prior day). The following sets forth the procedures to facilitate trade adjustments and to authorize the LCC to make such adjustments. All requests among Participants and to the LCC for trade adjustments shall be in the form of administrative messages sent through the System. For the purposes of this section 6(a)(vi), administrative messages sent or received among Participant Markets, or sent to the LCC, shall be deemed to have been issued by supervisors of Participant Markets authorized

by such Participant Markets to issue such administrative messages.

A) Adjustments on Trade Day. The LCC shall make an adjustment to a trade entered into that same day based upon an administrative message request made from a supervisor of the Participant Market that received and executed the order (“executing market supervisor”). Such request shall not be made to the LCC unless an executing market supervisor has received from a supervisor in the Participant Market that issued the order (“issuing market supervisor”), in the form of an administrative message sent through the System, agreement as to the terms of, and authorization to make, the adjustment. The administrative message request to the LCC by the executing market supervisor shall specify the terms of, and authorization to the LCC to make, the adjustment.

In the event that, notwithstanding the provisions of the prior paragraph, an executing market supervisor requests the LCC to make a trade adjustment without having received an administrative message from an issuing market supervisor, and the LCC has made such requested adjustment, then the LCC shall, at the request and direction of an issuing market supervisor, made prior to the settlement for such trade, readjust such trade to its terms as they existed prior to such adjustment.

(B) Adjustments for Prior Trade Day. Except as provided in the preceding paragraph, the LCC shall make an adjustment to a trade entered into on a prior day only upon administrative message requests made from both executing and issuing market supervisors, each message specifying the same terms of, and authorization to the LCC to make, the adjustment.

(C) The provisions of paragraphs (A) and (B) of this section 6(a)(iv) shall not restrict the ability of any Participant Market to unilaterally request the LCC to end adjustments to trades or to cancel or adjust any System trade executed in its market pursuant to its rules pertaining to

clearly erroneous transactions or obvious errors, and system malfunctions. The sending market may invoke any appellate or review process provided by such rules on behalf of the Sponsoring Member. In the event of any cancellation or adjustment, the executing market shall notify the LCC and all affected Participants by administrative message specifying the terms of the cancellation or adjustment and authorizing the LCC to make the adjustments or cancel the trades.

(D) LCC Confirmation. The LCC shall, after making a trade adjustment, send an administrative message to both the executing and sending market supervisors confirming that the adjustment has been made and specifying the terms of the adjustment.

(v) Intermarket Sweep Orders. All routed limit orders shall be presumed by the executing market to be orders sent pursuant to the intermarket sweep order exception in SEC Rule 611(b).

(vi) Other. Each Participant shall also determine how orders received in the market for which it has responsibility are to be handled therein and agrees that any procedures it may adopt in this regard shall be consistent with the provisions of the Linkage Plan and the efficient operation of the System. Participants are required to execute orders at a minimum at the size of their displayed quotes. Each Participant shall insure that no communication shall be entered into the System from its market except (A) on behalf of a member of such Participant who is permitted by the Linkage Plan and such Participant's rules to use the System with respect to the security or securities that are the subject of the communication or (B) by employees of such Participant in performance of such Participant's obligations under the Linkage Plan.

b) Participant Trading Rules. The trading rules applicable in destination Participant Markets shall apply to orders received in such market and executions of orders therein. Each Participant shall determine the extent to which its trading rules shall apply to members within its

market insofar as such members' issuance of orders from such market and resulting executions are concerned.

7. **Comparison and Settlement.** Comparison of a side of a System trade furnished by a Participant shall be the responsibility of such Participant.

(a) **After Hours Functions.** The functions of the System after the close of trading in all Participant Markets shall consist of the following:

(i) The System's daily log of messages will be put on tape for retention;

(ii) The System will generate four reports:

(A) An order/response report that will match orders to trade with the appropriate responses,

(B) An order/cancellation report that will list all orders to trade that were canceled,

(C) A trade adjustment report that will list all adjustments made to previously executed System trades, and

(D) A traffic summary report that will indicate the number of orders to trade, the number of responses and the number of administrative messages entered from each Participant Market during the trading day; and

(iii) The System will generate the clearing tape referred to in section 7(b).

(b) **Clearing Tape.** At the end of each trading day, the System generates a clearing tape as part of after-hours processing. This tape is in OID sequence, includes all of the day's System trades, and shows:

(i) The OID,

(ii) The originating Participant and clearing member(s), or the clearing corporation(s) through which such clearing member(s) shall settle the trade,

- (iii) The destination Participant and destination clearing member(s), or the clearing corporation(s) through which such clearing member(s) shall settle the trade,
- (iv) The type of trade action (buy or sell),
- (v) The security symbol,
- (vi) The executed quantity and price, and
- (vii) The date and time of trade.

Adjustments to any System trade made by agreement between both sides of the trade are included in the tape and shown as a separate “trade adjustment record”. If a trade has been adjusted, the original trade record is followed by trade adjustment record(s). The trade adjustment record(s) carry the same OID as the original trade record. There are two types of trade adjustments, System trade cancellations and System trade changes. For System trade cancellations, the adjustment record negates the original trade record. For example, a cancellation of a trade to buy is reflected on the adjustment record as a “negative buy”. For System trade changes, there are two adjustment records. The first adjustment record negates the original trade record. The second adjustment record logs the trade data as adjusted for, e.g., a change in action, security, quantity and/or price. The adjustment records are generated from the trade adjustment file that is created during trading hours and from inputs from the Linkage control center pursuant to requests from the Participants’ supervisors.

(c) Comparison of System Trades. The contra side of each System trade ultimately is the clearing interface account used to identify the clearing corporation through which the comparison of such side is completed. If both sides of a System trade are to settle through the same clearing corporation, the clearing corporation may, at its option, either book each side against the clearing member responsible for that side or offset each side against an internal

omnibus account (in which case the omnibus account will net to zero).

While sorting and format changes may be required, the various clearing corporations are able to use the System clearing tape as the basic input to their trade comparison operations. The clearing member(s) responsible for an Exchange-supplied side of a System trade shall follow routine comparison procedures. In instances where an uncomparing transaction cannot be resolved through routine procedures, the Exchange-supplied side(s) of the trade discrepancy will be handled in accordance with the rules of the Participant(s) and clearing corporation(s) involved.

Once comparison has been completed, clearance and settlement can proceed in a routine manner. System trades are processed with all other transactions through established clearing interfaces.

(d) Participant Settlement Obligations. The rules of each Participant shall be designed to assure that if a System trade reported on the clearing tape (as adjusted) at the close of any trading day, as such trade relates to such Participant, cannot be compared notwithstanding the use of routine comparison procedures, such Participant shall on the scheduled settlement date honor such uncomparing trade; provided, however, that, if such a System trade as it relates to such Participant is rejected or excluded from the settlement operation conducted by the clearing corporation to which it was reported for settlement either because of the insolvency of the member(s) for whose account(s) it was to be settled or for any other reason (other than failure to compare), such Participant shall not be obligated to honor such trade and such trade shall be returned to such member(s).

In the event that a System trade as it relates to any Participant is rejected or excluded from the settlement operation conducted by the clearing corporation to which it was reported for

settlement for any reason other than failure to compare, neither the Participant from whose market the side of the trade that is rejected or excluded was supplied, the Participant from whose market the contra side of such trade was supplied nor any clearing corporation to which either side of the trade was submitted shall be obligated to honor the trade. Instead, the member(s) constituting the contra side of the rejected or excluded trade (the "contra party") shall, without unnecessary delay after receipt of notice of such rejection or exclusion, close out such trade in the best available market, except insofar as the rules of the clearing corporation to which the contra side was submitted or of the Participant from whose market the contra side was supplied are applicable and provide an alternative method for closing. The rules of each Participant shall state the foregoing closing obligations of the contra party.

8. Pre-Opening Price Information

The NYSE and AMEX will disseminate, through the System, pre-opening price information whenever a member in that Participant market, in arranging an opening transaction in his or her market in a System security, anticipates that the opening transaction will be at a price that represents a change from the "previous day's consolidated closing price" of more than the "applicable price change."

The "previous day's consolidated closing price" is the last price at which a transaction in the security was reported by the CTA Plan Processor on the last previous day on which transactions in the security were reported by the CTA Plan Processor. The "applicable price changes" are:

<u>Security</u>	<u>Consolidated Closing Price</u>	<u>Applicable Price Change (\$) (More Than)</u>
Network A	Under \$15	0.10
	\$15 or over	0.25 ⁴
Network B	Under \$5	0.10
	\$5 or over	0.25 ⁵

Prior to the opening of trading in a System security for which the NYSE or AMEX has disseminated pre-opening price information, orders in that security shall be sent to that Participant through the Participant's order delivery system and not the NMS Linkage.

9. Operating Hours. Regular trading hours are from 9:30 a.m. to 4:00 p.m. eastern time. The normal operating hours of the System are 9:00 a.m. to 6:30 p.m. eastern time or such other period as the Supervisory Committee, by affirmative vote of all its members, may specify. Any period outside the normal operating hours of the System is herein referred to as an "additional period". The System shall be operable during any additional period requested in writing by any two or more Participants; provided that such Participants have agreed to pay all costs and expenses attributable to the operation of the System during such additional period as agreed to by those Participants.

⁴ If the previous day's consolidated closing price of a Network A Eligible Security exceeded \$100 and the security does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is one dollar.

⁵ If the previous day's consolidated closing price of a Network B Eligible Security exceeded \$75 and the security is not a Portfolio Depositary Receipt, Index Fund Share, or Trust Issued Receipt, or does not underlie an individual stock option contract listed and currently trading on a national securities exchange, the "applicable price change" is one dollar.

10. Financial Matters.

(a) Costs. The Participants shall share the “development costs” and “production costs”, in accordance with the provisions of this section 10(a).

(i) Costs Definitions

(A) “Computer software” includes all programs or routines developed by or at the direction of the System’s facilities manager (including such development in connection with the Intermarket Trading System) to cause computers to perform tasks required for any one or more Applications and the documentation required to describe and maintain those programs.

Computer programs of all classes, for example, operating systems, execution systems, monitors, compilers and translators, assembly routines, and utility programs are included.

(B) “Development costs” mean all costs incurred by the System’s facilities manager in developing and improving the computer software and installing hardware as necessary to facilitate System functionality (including any testing conducted in connection with the System).

(C) “Installing hardware as necessary” includes, but is not limited to, installation and maintenance of all installations and computer facilities required to support the System.

(D) “New Participant” means any national securities exchange or national securities association that becomes a Participant in accordance with section 3(c) after SEC approval of this Linkage Plan.

(E) “Production costs” mean all operating expenses associated with the operation of the System, including all costs and expenses (including appropriate overhead costs and all applicable taxes however designated, exclusive of net income taxes) of the System’s facilities manager associated with, relating to, or resulting from its operation or maintenance of the

System, but excluding any cost or expense associated with any Participant's self-regulatory function. Production costs also include the costs and expenses of the facilities manager: (i) in maintaining "hot lines" that permit conversations among broker-dealers and staff in different Participant Markets and with the Systems control center; and (ii) associated with reports rendered by a firm of independent accountants pursuant to paragraph (a)(vi) of this section 10.

(F) "Routed orders base" for any calendar quarter means the total number of orders sent through the System.

(G) "Share of the routed orders base" of any Participant as computed for any calendar quarter means a fraction, the numerator of which is the total number of orders sent through the System by that Participant during the calendar quarter and the denominator of which is the routed orders base for the calendar quarter.

(H) "Share of the transactions base" for a calendar quarter means:

- (1) for any Participant other than AMEX or NYSE, a fraction, the numerator of which is the total number of transactions in Network A Eligible Securities that the Participant reports to the CTA Plan Processor during that quarter and the denominator of which is the quarter's transactions base;
- (2) for AMEX, a fraction, the numerator of which is the number of transactions in "Top Ten Network B Eligible Securities" (as clause (2) of section 10(a)(i)(I) defines that term) that AMEX reports to the CTA Plan Processor during that quarter and the denominator of which is the quarter's transactions base; and

(3) for NYSE, the fraction derived by subtracting from 1 (one) the sum of all other Participants' shares of the transaction base for the quarter.

(I) "Transactions base" for any calendar quarter means the sum of (1) the number of transaction reports in Network A Eligible Securities that the CTA Plan Processor disseminates during the quarter and (2) the number of transaction reports in the "Top Ten Network B Eligible Securities" that the CTA Plan Processor disseminates during the quarter. A quarter's "Top Ten Network B Eligible Securities" refers to the ten Network B Eligible securities for which the CTA Plan Processor disseminates the greatest number of transaction reports during that quarter.

(ii) Dispute Costs Excluded. The development costs and production costs shall not include any cost or expense incurred by any Participant as a result of or in connection with the defense of any claim, suit or proceeding against the Supervisory Committee or any one or more of the Participants relating to the Linkage Plan or the operation of the System. All such costs and expenses incurred by any Participant shall be borne by such Participant without contribution or reimbursement.

(iii) Development Costs.

(A) New Development Costs Sharing. Development costs shall not be incurred except as agreed to by all Participants. Each Participant shall pay a fraction equal to its share of the transactions base for the calendar quarter preceding the calendar quarter during which the Participants agree to incur such cost. Any development costs that are incurred for the benefit of less than all Participants shall be shared by the Participant or Participants that benefit therefrom as they shall mutually agree.

(B) Development Costs Payment. Development costs will be computed by the System's facilities manager as soon as practicable following the close of the calendar month or,

if relatively small, the calendar quarter during which they were incurred. Each Participant's share shall be billed to, and payable by, such Participant promptly thereafter.

(C) New Participant's Share of Development Costs. At the time any national securities exchange or national securities association applies to become a new Participant, such applicant shall be charged by, and shall pay to, the System's facilities manager an amount estimated by the System's facilities manager to cover development costs to be incurred to accommodate such applicant's status as a Participant. Prior to the effective date of the SEC's approval of such Participant status, the applicant shall pay to the System's facility manager actual development costs in excess of estimated development costs, if any, or the System's facility manager shall reimburse to the applicant estimated development costs that were paid and that are in excess of actual development costs. Each new Participant shall share in development costs incurred after it becomes a Participant in accordance with section 10(a)(iii)(A).

(D) Title to Software. The entire right, title and interest in and to all "computer software" (as defined in section 10(a)(i)(A)) developed prior to July 1, 1978 shall be vested in the Participants who share the cost of such computer software as joint owners. The entire right, title and interest in and to all computer software developed after June 30, 1978 shall be vested in the Participant who pays the cost thereof. If more than one Participant shares in the cost of computer software developed after June 30, 1978, then the entire right, title and interest in and to such computer software, the cost of which is so shared, shall be vested in the Participants who share such cost as joint owners. The System's facilities manager shall use computer software solely for the purpose of performing tasks required for the Applications as provided in the Linkage Plan.

(iv) Production Costs

(A) Production Costs Sharing. The production costs attributable to any calendar quarter shall be shared by the markets that were Participants during any portion of the calendar quarter. Each such Participant, except the NYSE, shall pay 50% of the fraction of such production costs equal to its share of the routed orders base as computed for the calendar quarter. Notwithstanding the foregoing, the aggregate dollar amount of all of a Participant's quarterly payments shall not exceed its "Production Costs Sharing Cap." A Participant's "Production Costs Sharing Cap" means total production costs for calendar year 2005 multiplied by 50 percent of the Participant's percentage of the routed order base for the period commencing January 1, 2005, and ending July 31, 2005. The NYSE shall pay those production costs that this Paragraph does not require the other Participants to pay.

(B) Production Costs Payment. Production costs will be computed by the System's facilities manager as soon as practicable following the close of each calendar month. Each Participant's (or former Participant's) estimated share thereof shall be billed by the System's facilities manager and shall be payable to the System's facilities manager promptly following receipt. Any appropriate adjustment will be made between the System's facilities manager and each Participant promptly following the close of each calendar quarter.

(v) Communications Connection Costs. Each Participant shall bear 100% of the costs to provide communication connection from a Participant's facilities to the System's communications facilities maintained by the facilities manager.

(vi) Accounts. The System's facilities manager and the independent public accountants hereinafter referred to shall furnish any information and/or documentation reasonably requested in writing by a majority of the Participants in support of or relating to any of the

computations referred to in this section 10(a). All expenses, allocations and computations referred to or required by this section 10(a) shall be reported at least annually to the Participants. For even numbered years, (or such other yearly interval as the Supervisory Committee, by affirmative vote of all its members, may specify), such reports shall be rendered by a firm of independent public accountants (which may be the firm regularly employed by the NYSE or the System's facilities manager), and such accountants shall render their opinion that such expenses, allocations and computations have been reported in accordance with the understanding among the Participants as set forth in this section 10(a). For those years when a firm of independent public accountants is not engaged to render a report, the facilities manager's internal auditor shall review all expenses, allocations and computations referred to or required by this section 10(a) and that internal auditor shall report that such expenses, allocations and computations have been reported in accordance with the understanding among the Participants as set forth in this section 10(a).

(b) User Charges. Each Participant shall be free to determine whether or not to impose a fee or charge on some or all of its members in connection with use of its facilities to access the System and, if so, the amount of such fee or charge. Any fee or charge that may be imposed by any Participant shall not be of such size, and shall not be so structured, as to discourage use of the System.

(c) Facilities Manager Liability Limits. The System's facilities manager shall not be liable to any Participant or to any member of any Participant using or having access to the System or to any other person for any loss or damage resulting from any non-performance, or interruption in the operation of the System, from any inaccuracies, errors or omissions in any of the information conveyed or received through the System, or from any delays or errors in the transmission of any such information, or for making trade adjustments.

11. Termination; withdrawal. The Linkage Plan will terminate on June 30, 2007. Participants that wish to extend the term may agree to do so, subject to filing with and approval by the SEC. During the term of the Plan a Participant may withdraw with 30 days notice if it continues to maintain connectivity to all other Participants and accept orders through the Linkage until June 30, 2007. A withdrawing Participant's right to send orders through the Linkage shall terminate on the date the withdrawal is effective. In addition, a withdrawing Participant's obligation to share development and production costs shall terminate on the date the withdrawal is effective, provided, however, that such Participant shall remain liable for, and shall pay upon demand, its portion of the costs of developing and operating the System and any other amounts payable by it as determined pursuant to sections 10 and 12 of the Linkage Plan.

12. System Inoperability.

(a) General. In the event of a disaster that renders the System inoperable, the NYSE has authorized the facilities manager to utilize a designated NYSE operating system (the "NYSE System") on a preemptive and priority basis to function as detailed in section (c)(i), below.

(b) Participants' Implementation Obligations.

(i) At any time the NYSE System assumes the functions of the System, all Plan provisions not inconsistent with this section 12, and Participant rules and policies governing use of the System will continue to apply.

(ii) Each Participant's cost of maintaining communications connectivity to the NYSE System shall be borne by that Participant.

(c) NYSE Implementation Obligations. In consideration of the fees to be paid to the NYSE as specified in paragraph (d) of this section 12, the NYSE agrees:

(i) to have and to make available the NYSE System to assume the functions of the System on a preemptive and priority basis in the event of a disaster which renders the System inoperable. Such system is composed of computers and peripheral equipment sufficient to operate the System at a minimum of 50% of the System's rated 150 messages per second capacity and 75% of the System's disk capacity.

(ii) that the facilities manager is authorized to take the actions necessary to make the NYSE System available to assume the functions of the System within two hours in the event of a limited disaster and on the next day in the event of a full site disaster. The facilities manager is authorized to make the determinations that, in its good faith judgment, there has been a limited disaster or full site disaster, the System is inoperable, and the NYSE System will assume the functions of the System.

(iii) that the NYSE System will be located at a site remote from the site where the System is located.

(d) Implementation Obligations of Participants Other than NYSE ("Other Participants").

(i) Fees. In consideration of the NYSE's making available the NYSE System to assume the functions of the System in the event of a disaster, the Other Participants agree to pay to the NYSE: (A) a preemptive and priority reserve fee totaling \$24,800 per calendar quarter (such reserve fee shall be adjusted each January by the same percentage change as in the Consumer Price Index as calculated by the U.S. Department of Commerce for the preceding calendar year); and (B) a per diem fee, if in the event of a disaster the NYSE System assumes the functions of the System, for each day in excess of five consecutive trading days that the NYSE System is so utilized. Such per diem fee shall equal 1/250 of the yearly dollar amount the

facilities manager charges the NYSE to operate the NYSE System.

This subsection (d)(i) shall become effective on the date that the facilities manager confirms in writing to the Supervisory Committee that it has taken all actions necessary to make the NYSE System available to assume the functions of the System as specified in subsection (c) of this section 12. If such effective date is other than the first day of the calendar quarter, then the preemptive and priority reserve fee for such calendar quarter shall be calculated pro rata based upon the number of days in such calendar quarter that the NYSE System is so available.

(ii) Fee Sharing. Each of the Other Participants agrees to pay a share of the preemptive and priority reserve and per diem fees based upon a proportional share of its production costs excluding the NYSE's share.

(iii) Fee Payment. Fee payment will be computed by the System's facilities manager as soon as practicable following the close of each calendar month. Each Other Participant's (or former Participant's) estimated share thereof shall be billed by the System's facilities manager and shall be payable to the System's facilities manager promptly following receipt. Any appropriate adjustment will be made between the System's facilities manager and each Other Participant promptly following the close of each calendar quarter. The facilities manager shall forward such payments to the NYSE as the NYSE may from time to time instruct the facilities manager.

(e) Liability Limits. Neither the NYSE nor the facilities manager shall be liable to any Participant, to any member of any Participant using or having access to the NYSE system, or to any other person for any loss or damage resulting from any non-performance or interruption in the operation of the NYSE System, from any inaccuracies, errors or omissions in any of the information conveyed or received through the NYSE System, or from any delays, omissions, or

errors in the transmissions, or errors in the transmission of any such information.

(f) **Termination.**

(i) In the event that the NYSE determines to withdraw the NYSE System from use by the Linkage, it shall so notify the Supervisory Committee, in writing, a minimum of six months prior to such withdrawal.

(ii) In the event of such withdrawal, this section 12 shall be terminated and the Participants must then determine whether they should provide for alternative procedures in the event of System inoperability.

13. Effective Date: The Linkage Plan shall become operative on October 1, 2006.

14. Counterparts. The Linkage Plan may be executed in any number of counterparts, no one of which need contain all signatures of all Participants, and as many of such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

By _____

AMERICAN STOCK EXCHANGE LLC

By _____

NATIONAL STOCK EXCHANGE

By _____

BOSTON STOCK EXCHANGE, INC.

By _____

NEW YORK STOCK EXCHANGE LLC

By _____

CHICAGO BOARD OPTIONS
EXCHANGE, INC.

By _____

NYSE ARCA, INC.

By _____

CHICAGO STOCK EXCHANGE, INC.

By _____

PHILADELPHIA STOCK EXCHANGE, INC.

By _____

NASDAQ STOCK MARKET LLC